

HR Weekly Podcast

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Today is March 26, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. Today's topic deals with employers' arbitration agreements.

Cellular Sales of Knoxville, Inc. and Cellular Sales of South Carolina, LLC, own and operate a chain of stores that sells cellular service plans, equipment, and accessories. In May and October 2011, LLCs owned by David Newbanks and Jennifer Walton entered into an independent sales agreement with Cellular Sales. The agreement did not name or bind Newbanks or Walton in their individual capacities. Under the agreement, the LLCs became independent contractors of Cellular Sales. The LLCs were to market Cellular Sales products in certain areas and would be paid sales commissions. The agreement expressly stated that "each person who is engaged by [an LLC] to render services...shall be an employee of the LLC and not of [Cellular Sales]." Employees of the LLCs were not "entitled to receive any compensation, benefits, vacation or vacation pay, or participation in a retirement program, health insurance, disability insurance, [or] unemployment benefits" from Cellular Sales.

In December of 2011, Cellular Sales revisited the independent sales agreement. The new arrangements were memorialized in "compensation agreements" that were executed between Cellular Sales and Newbanks and Walton in their individual capacities. In the compensation agreement, Newbanks and Walton became "at-will employees" of Cellular Sales and their compensation was paid to them individually. The compensation agreement did not reference the independent sales agreement or Cellular Sales' previous relationship with the LLCs. The compensation agreement included the following arbitration provision:

All claims, disputes, or controversies arising out of or in relation to this document or [the] employee's employment with [Cellular Sales] shall be decided by arbitration utilizing a single arbitrator in accordance with the Expedited Labor Arbitration Procedures of the American Arbitration Procedures Association....The right to arbitrate shall survive termination of [the] employee's employment with [Cellular Sales].

The provision further stated that any disputes would be arbitrated in an individual capacity, "not as a plaintiff or class member in any purported class, collective action, or representative proceedings."

Newbanks's and Walton's employment ended with Cellular Sales in March and April 2012, respectively. On May 29, 2012, the employees sued alleging violation of the Fair Labor Standards Act, or FLSA, and the South Carolina Payment of Wages Act. Newbanks and Walton alleged that Cellular Sales improperly classified them as independent contractors under the independent sales agreement in violation of federal and state law. Newbanks and Walton contended that because Cellular Sales exercised control over their work, specifically their hours, duties, procedures, and protocols, they were acting as employees under the FLSA and state law. Cellular Sales denied that allegation.

Based on the arbitration provision in the compensation agreement, Cellular Sales asked the court to dismiss the case and compel arbitration. Newbanks's and Walton's original complaint did not refer to

the arbitration clause in the compensation agreement nor did it state a specific time frame for Cellular Sales' alleged violations. The employees asked the court to amend their complaints "to only those acts occurring prior to the execution of the compensation agreement." The district court allowed the complaint to be amended under the Federal Rules of Civil Procedure. Finding that the amended complaint fell outside the scope of the arbitration provision in the compensation agreement because the disputes predated the compensation agreement, the district court declined to send the amended complaint to arbitration. Cellular Sales appealed the decision to the Fourth Circuit.

The Fourth Circuit noted the primary issue was whether the district court properly held that the arbitration provision in the compensation agreement did not apply to claims that arose before Newbanks and Walton became at-will employees of Cellular Sales. The amended complaint was limited to allegations that were based on acts and omissions that occurred before they became at-will employees. The Fourth Circuit agreed with the district court's decision that the arbitration provision did not apply to the claims that arose before the compensation agreements were signed.

If you have a question about this topic, please contact your HR Consultant at 803-896-5300. Thank you.